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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,944	01/23/2004	Rajiv Laroia	Flarion-69APP (94)	5067
26479	7590	02/22/2008		
STRAUB & POKOTYLO 620 TINTON AVENUE BLDG. B, 2ND FLOOR TINTON FALLS, NJ 07724			EXAMINER TRAN, PHUC H	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 02/22/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/763,944

Applicant(s)

LAROIA ET AL.

Examiner

PHUC H. TRAN

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-83 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 47-71 is/are allowed.
- 6) ☒ Claim(s) 1,3,6,8,11-16,24,25,29,32-35,37-40,44,72,73 and 75-83 is/are rejected.
- 7) ☒ Claim(s) 2,4,5,7,9,10,17-23,26-28,30,31,36,41-43,45,46 and 74 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

*Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1,3,6,8,11-16,24,25,29,32-35,37-40,44,72,73 and 75-83 are rejected under 35 U.S.C. 102(e) as being anticipated by Das et al. (Pub. No. 2003/0148738).

- With respect to claims 1,29,33-35,37,44,68,70,72,75,78, and 81, Das teaches a communications method for use in a communications system including a first cell including a first base station and at least a first wireless terminal (e.g. Fig. 1 shows the base station and mobile station), the method comprising:

operating the first base station to transmit signals on a plurality of different communications channels (e.g. channels 132 to the mobile station as Fig. 1 shows), each individual one of the plurality of different communications channels each having a physical characteristic (e.g. fig. 1 shows each channels with different W block 115) which is detectable by said first wireless terminal (e.g. the mobile receives channels block 204 in fig. 2), transmitting the signals on the plurality of different communications channels including periodically changing at least one signal transmission characteristic of a first communications channel in said plurality

of communications channels to introduce an intentional variation into said first communications channel which results in a change in said physical characteristic corresponding to the first communications channel (see page 5 paragraph 50); and

selecting between said plurality of different communications channels for purposes of transmitting the signals to said first wireless terminal in response to feedback information received from said first wireless terminal indicating the one of the plurality of different communications channels which provides the best transmission channel conditions for transmissions to the first wireless terminal at a particular point in time (e.g. step 206-214 in fig. 2 and paragraph 50).

- With respect to claim 3, Das also teaches operating the first base station to periodically transmit a pilot signal in each of said different communications channels, the pilot signal transmission being independent of information signals transmitted to any wireless terminal using the different communications channels (e.g. the pilot added into channel as fig. 1 shows and paragraph 50).

- With respect to claim 4, Das discloses wherein said physical characteristic of one of said different communications channels is different from said physical characteristic of another one of said different communications channels (e.g. the channel quality of each channel are different).

- With respect to claims 6, and 39, Das teaches wherein said feedback information received from said first wireless terminal includes at least one channel quality report (e.g. step 312 in Fig. 3).

- With respect to claims 8, and 40, Das teaches wherein said at least one channel quality report indicates at least one of a signal to noise ratio and a signal to interference ratio measured at said first wireless terminal for one of said plurality of different communications channels (see paragraph 29).

- With respect to claim 13, Das teaches the first wireless terminal to make measurements of a plurality of communications channels included in said plurality of different communications channels (e.g. block 126 in fig. 1 shows the terminal measure the channels quality).

- With respect to claims 14-16, Das further comprises operating the first wireless terminal to select between said plurality of communications channels based on said measurements and to communicate said selection to said base station (e.g. steps 210 in fig. 2 shows the mobile feedback the channel quality information to the base station which consider select between channels).

- With respect to claim 24, Das teaches wherein said first communications channel includes a first amplifier and a first antenna (e.g. Fig. 1 and paragraph 21); and wherein changing at least one signal characteristic of the first communications channels includes changing the amplification provided by said first amplifier to a signal being transmitted on said first communications channel (see paragraph 26).

- With respect to claim 25, Das discloses wherein said plurality of different communications channels includes a second communications channel, the second communications channel including a second amplifier and a second antenna (e.g. Fig. 1 shows antennas); the method further comprising: periodically changing at least one signal characteristic of the second communications channel by periodically changing the amplification provided by

said second amplifier to a signal being transmitted on said second communications channel (see paragraph 50).

- With respect to claims 38, 76-77, 79-80, and 82-83 Das teaches operating the wireless terminal to select which one of said plurality of communications channels should be used to transmit information to said wireless terminal as a function of the channel quality measurements (e.g. step 204 in Fig. 2); and wherein said channel quality feedback information includes a channel identifier identifying the selected communications channel (e.g. step 212 in fig. 2).

- With respect to claims 69, 71, and 73 Das teaches wherein the method further comprises: scheduling information transmission to a plurality of wireless terminals on each of the plurality of different communications channels, said scheduling including assigning information transmission times to different wireless terminals which are to use the same one of the different communications channels (see paragraph 44, & 49).

#### ***Allowable Subject Matter***

3. Claims 47-71 are allowed.
4. Claims 2, 4, 5, 7, 9, 10, 17-23, 26-28, 30-31, 36, 41-43, 45-46 and 74 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

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Art Unit: 2616

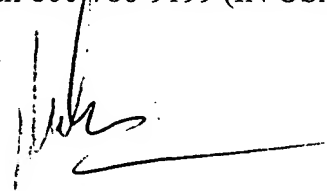
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHUC H. TRAN whose telephone number is (571) 272-3172. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHI PHAM can be reached on (571) 272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Phuc Tran  
Assistant Examiner  
Art Unit 2616



P.t